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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 31st March 1953

S.R.O. 628.—WHEREAS the election of Shri Sitaram Vishwanath Tatke, as a member of the Legislative Assembly of the State of Madhya Bharat, from the Guna Constituency of that Assembly, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by Shri Brindaban Prashad Tiwari, son of Shri Devakinandan, Caste Brahmin, Guna, Madhya Bharat State;

AND WHEREAS the Tribunal appointed by the Commission in pursuance of the provisions of section 86 of the said Act for the trial of the said petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Election Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL AT INDORE (MADHYA BHARAT)

ELECTION PETITION No. 92 OF 1952

Shri Amar Nath Segal, B.Sc. (Hons.), LL.B.—*Chairman.*

Shri R. N. Shingal, B.A., LL.B.—*Member.*

Shri M. B. Rege, B.A., LL.B.—*Member.*

Brindaban Prashad Tiwari, s/o Devkinandan, Caste Brahmin of Guna—*Petitioner.*

V.

1. Sita Ram, s/o Vishwanath Tatke, caste Brahmin of Guna—*Respondent No. 1.*
2. Nathulal Gappulal Mantri, caste Vaishya of Guna—*Respondent No. 2.*

M/S. Prem Narayan Mishra, G. S. Gandhe, N. C. Chatarji, G. W. Oak, V. V. Kotwal and Shrimati K. Gandhe, Counsel for the Petitioner.

M/S. S. M. Samvatsar, Shri Pande and Kutamble, Counsel for the Respondents.

ORDER

Shri Sitaram Vishwanath Tatke was elected from Constituency Guna No. 59 of the Madhya Bharat Legislative Assembly, by a margin of 14 votes over the petitioner Bindrabhan Prasad Tiwari. The Election is challenged by the petitioner on the ground that Shri Tatke was on the date of his nomination holding an office of profit under the Government as a Patel of the village Vinayak Khedi, and was, therefore, disqualified from being validly nominated. It is further alleged, that he had obtained, by impersonation of voters with his knowledge and connivance, a large number of votes; that some voters who purported to have cast their votes for him, were not living on the date of the poll, and others were not at the polling station. It is also alleged, that material prejudice had been caused to the petitioner by tendered votes having been left out of account. It was alleged in the alternative, that if Shri Tatke was held to have not been a Patel at the date of the nomination, the same considerations applied in the case of one Daulatram, a candidate whose nomination paper had been rejected, and that by reason of the improper rejection of Daulatram's nomination the election was prejudiced and, therefore, void. The petitioner further alleged, that Shri Tatke had employed Patels who were holding offices of profit under the Madhya Bharat Government as his polling agents, and that the voters list of village Chak Bhora was not available at the Colony Polling Station and about 50 voters of the said village had thus been deprived of their legitimate voting right.

It is common ground that Shri Tatke was at one time the Zamindar of Vinayak Khadi. On the promulgation of the Zamindari Abolition Act, the Government of Madhya Bharat fixed the 2nd of October 1951 as the date for the vesting of the village, but on a petition for a writ of mandamus the High Court of Madhya Bharat issued an injunction *ad interim* restraining the Government from taking possession of the Zamindari lands. During the interval between the promulgation of the Act and the interim injunction, the Government had notified the appointment of the erst-while Zamindars as the Patels of the villages previously held by them as Zamindars, but by reason of the injunction the operation of the Act was suspended and the position was that the Zamindars became Patels designate, but not Patels holding the office, in fact. Shri Tatke on these facts contended, that he was not a Patel; and that even were he one, he had before the scrutiny of his nomination papers actually tendered his resignation to the Collector who forthwith accepted it, and, therefore, there was no force in the contention of the petitioner that the acceptance of his nomination was improper. He denied the allegations of impersonation and prejudice to the petitioner by reason of the tendered votes not being taken into account. In para. eleven of his statement he questioned the competence of the petitioner making a grievance of the rejection of the nomination form of Daulatram, since Daulatram himself had not raised that question.

The following issues were framed for trial:—

1. Was respondent No. 1 not a Patel on 20th November 1951, the date of nomination? (In view of the admission that he resigned on 22nd November 1951 the burden of proof was placed on the respondent)?—*Respondent.*
2. If he was, was he holding an office of profit under the Government of Madhya Bharat and, therefore, disqualified for being elected to the Legislative Assembly?—*Petitioner.*
3. Whether the relevant date for consideration of the disqualification is the date on which the nomination paper is presented or the date of scrutiny?—*Petitioner.*
4. Has the result of the election been materially affected by the improper acceptance of the nomination paper of Respondent No. 1?—*Petitioner.*
5. Has Respondent No. 1 obtained any votes as a result of impersonation by his voters, of persons who were dead or not present at the polls and has the acceptance of such votes materially affected the result of the election?—*Petitioner.*
6. Whether the impersonation, if proved was with the knowledge or connivance of Respondent No. 1, and through his agents?—*Petitioner.*
7. Whether the petitioner has in fact received a majority of valid votes and is on that ground entitled to be declared elected?—*Petitioner.*
8. Whether the petitioner is not entitled to raise the question of the improper rejection of the nomination paper of Daulatram?—*Respondent.*
9. Whether the rejection of the nomination paper of Daulatram was improper and if so, has it caused prejudice to the petitioner?—*Petitioner.*

10. Whether the respondent No. 1 has, by appointing Patels as his polling agents, contravened the provisions of Section 123(8) of the Representation of the People Act? If so how is the election affected?—*Petitioner.*
11. (a) Whether the Voter's list of Chak Bhora was neither displayed nor available with the Presiding Officer of Kolony Polling Station No. 59/87—*Petitioner.*
- (b) Whether 50 voters of the said Chak Bhora were deprived of the legitimate voting rights?—*Petitioner.*
- (c) And whether these circumstances have materially affected the result of the election?—*Petitioner.*

On an application of the respondent Shri Tatke, dated 28th October 1952 the issues were reconsidered, and issues numbers 6 and 10 were struck off, issue number 5 was amended in the present form by our order, dated 29th October 1952 (copy attached herewith).

Evidence has been recorded in the case in detail, the petitioner having taken on himself the burden of proof of the question regarding personation the absence of the list of Chak Bhora's and the rejection of Daulatram nomination. It was assumed by the parties as issues numbers 1 and 2 will indicate, that *prima facie* that the burden of proving that Shri Tatke was not a Patel, was on Shri Tatke himself, and that the petitioner should lead evidence in the first instance. It is unfortunate that by reason of this aspect of the burden of proof a mass of evidence has come on the record, on the other issues, which in the view that we take on the question of Patel could have been avoided.

The contention of Shri Tatke in para. 3 of his written statement was that although he had been appointed as Patel, he was not in fact the Patel, because the interim injunction issued by the Madhya Bharat High Court, before the vesting of the village in the Government under the Madhya Bharat Abolition Zamindaris Act, obstructed his taking the office and that in any case he had resigned prior to the scrutiny. It will be, therefore, relevant to consider the several dates material to determine the effect of the interim injunction by the High Court, and the effect of the resignation. The date of nomination in this case was 20th November 1951. Shri Tatke's resignation was admittedly tendered on the 22nd, that is, after the nomination, but before the scrutiny. We have held in case of Chain Singh v. Pratapsingh Election Petition No. 93/1952 that the material date for consideration of the validity of the nomination paper is that of the nomination, and not of the scrutiny. And, therefore, if Shri Tatke is held to have been holding the office of Patel on the 20th of November, his subsequent resignation on the 22nd will not affect the issue.

The Zamindari Abolition Act came into force on the 25th of June, 1951, and the Rules under the Act were promulgated on the 28th of July 1951. The notification of the appointment of Patels, including Shri Tatke was made on 22nd September 1951 and Exs. P-61 and 62, show the acceptance of the appointment by Shri Tatke. A notification, dated September 1951 fixed the 2nd of October 1951 as the date of vesting under section 3 of the Zamindari Abolition Act; but on the petition, for a writ of mandamus the High Court passed interim injunction on 1st October 1951 restricting the operation of the Act. It is clear therefore that there was no vesting and there could be none in face of the injunction. In fact the Government issued instruction to the Collectors directing that notwithstanding the notification of appointment the nominees should not do the work of Patel.

We are, therefore, constrained to hold, that since there was no office of Patel, under the Government on the 2nd of October 1951 which Shri Tatke could hold he was not a Patel on the date of the nomination, when admittedly the injunction was still in force.

But this takes us to the other question, namely the effect the rejection of the nomination paper, of Shri Dalutram, who was a Zamindar like Shri Tatke, and had been notified in the list of Patels designate. It is conceded, that the same consideration would apply in both cases, namely, of Shri Tatke and Shri Dalutram in determining whether they were holding the office of Patel. And for reasons discussed we must hold that Dalutram too did not hold the office of Patel at the date of his nomination and, therefore, the rejection of his nomination paper was invalid. Section 100 clause C of the Representation of the Peoples Act provides that an election would be void if the nomination paper of a candidate is improperly rejected.

It has been consistently held by Election Tribunals that the improper rejection of a nomination paper, renders the whole election void. We would refer in this connection to Parker's Election Agent and Returning Officer 5th Edition page 141 referring to *Davies v. Lord Kensington* and the cases reported in Doabia's Election Cases Vol. 1, Case No. 10 *Thakur Udaya Vir Singh v. Raj Kumar Singh* Doabia's Indian Election Cases Vol. 1, page 13, *Sardar Gurbaksh Singh v. Sardar Baldeo Singh*, page 211 *Ramchandra Ananaji Khevgikar v. Shiv Vishal Singh Harpal Singh*, page 322 *Sardarni Prakash Kaur v. Raj Bahadur Basakha Singh*, page 77 *Sardar Harcharan Singh v. Sardar Narootam Singh*, page 80 *Sardar Basant Singh v. Sardar Rattan Singh*, page 98 *Amir Mohammad Khan v. Atta Mohammad Khan*, page 137 *Mahadev Parashram Diwan v. Vinayak Pehdharl Nath Thorat*, page 247 *Few v. Gibbon* and page 209 *Lewis v. Gibbon* and Doabia's Indian Election Cases Vol. II, page 10 *Abdul Hayat Khan Choudhari v. Zahur Ahmad Choudhari*, page 217 *Jagganath Prasad v. Maheswar Dayal Seth*, page 302 *Zainulbodin Shah v. Mohammed Amin*, *Abdul Qayyum v. Mohammed Amin*, *Mahmud Ali v. Mohammed Khan* and page 341 *Bashir Ahmad v. Akhtar Husain Khan*. This Tribunal has also held the view in the case of *Anandrao Rege v. Kailash Chandra Giri Election Petition No. 41 of 1952*.

It was contended on behalf of Shri Tatke, that since Daulatram himself had not raised the question of the improper rejection of his nomination paper, it was not open to the petitioner to make such rejection a ground of attack. We are clearly of the view, that this contention has no force. It is well established that an election is not a matter inter parties and especially in the frame work of the Constitution, it is the right of every voter, to cast his vote in favour of a person of his choice. The improper rejection of a nomination paper therefore prejudicially affects the electors' right. Section 100 of the Representation of the Peoples Act clause C provides without reservation, that one of the grounds for declaring election to be void, is that the result of the election has been materially affected by the improper acceptance or rejection of any nomination, and we are of the view that such a plea, could be raised by any petitioner, whether he is a candidate or not. As stated above the difference between the votes cast for Shri Tatke and the Petitioner is only 14, and in absence of very strong, and conclusive evidence that this small margin could not have been wiped out if Daulatram's nomination paper had been accepted, the finding must be, that the election was prejudiced by Daulatram's nomination paper being rejected. There is not even a remote suggestion that this would not have been the case.

But it was suggested, that Daulatram had virtually withdrawn from the contest, since after the rejection of his nomination, he accepted the office of Patel and that in any case at the date of polling he did not remain a candidate for whom a vote could be cast. This contention must be repelled for the simple reason, that the material date for the determination of the question is that of the nomination and if a nomination paper is improperly rejected and thus the right to stand for election is denied to any candidate, the subsequent acceptance of an office would not affect the issue. It is the denial of the right that gives the cause for grievance. The status of the candidate and his eligibility must be considered with reference to that date, and not to events thereafter. It is open to a candidate whose nomination paper is rejected to say that, but for the rejection he would have had no occasion to accept the office which he subsequently did. We hold that Daulatram's nomination paper was improperly rejected, and that the subsequent acceptance of the office of Patel by him, does not affect the decision of this case.

We hold that by reason of the illegal rejection of the nomination of Daulatram, there has been prejudice vitiating the election. We, therefore, allow the petition and declare the election of Shri Tatke void. Considering that there has been undue expense in calling witnesses whose evidence in the circumstances stated above was unnecessary, the petitioner shall get 50 per cent. of the cost incurred. Pleaders fees Rs. 250.

(Sd.) AMAR NATH, *Chairman*,
Election Tribunal, Indore.

(Sd.) R. N. SHINGAL, *Member*,
Election Tribunal, Indore.

(Sd.) M. B. REGE, *Member*,
Election Tribunal, Indore.

The 14th March, 1953.

ELECTION PETITION No. 92 OF 1952

Ex. 57

ORDER

The petition in this case is not accompanied by a list setting forth full particulars of the corrupt or illegal practices alleged by the petitioner and it is contended on behalf of the first respondent by application dated 28th October 1952 that this omission is fatal to the petition and that in any case the allegations of such practices must be struck off from the petition. On 29th October 1952, the petitioner submitted his reply in which he urged that the omission to give a list was no more than a formal defect which could be cured by an amendment.

Section 83, clause 2 of the Representation of People Act 1951 provides that an Election Petition "shall be accompanied by a list signed and verified in like manner setting forth full particulars of any corrupt or illegal practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of each practice".

It is thus clear that these allegations in the Petition do not meet the requirements of law and when allegations of corrupt and illegal practices are made, a list giving particulars is indispensable. This is obviously intended to ensure that the Petition is based on specific instances of such practices so as to avoid a roving enquiry; and particulars which are insufficient to give notice to the sitting member of the charges he is called upon to meet, cannot be said to be full particulars within the requirements of Section 83(2).

It cannot be gainsaid that the allegations in the petition are vague. In para. 6 it is alleged that "the respondent No. 1 did in fact obtain, by impersonation within his knowledge and connivance and through his own agents, a large number of votes". It was conceded by the petitioner's learned counsel that no instance of personation with knowledge or connivance have been or could be given. Again the allegation in para. 12 regarding the appointment of Patels as polling agents does not even remotely suggest that these Patels misused their position to bring pressure on others for the furtherance of the prospects of the Candidate's Election so as to constitute the appointment a corrupt practice within the meaning of Section 123(8) of the Representation of People Act. *Harchandas v. Surendra Pratap D.E.C. No. 178 Sarin and Pandit* page 503.

It is unnecessary for the purpose of this petition to consider the plea advanced on behalf of the petitioner that a full statement in the petition dispenses with the need for a list prescribed by section 83(2) for even if we were to follow the extreme view taken in some cases viz. that if particulars are adequately stated in the petition the Court has power to allow better particulars to be given subsequently, the plea must be repelled as the particulars given in the petition cannot be said to be adequate and to allow particulars to be given at this stage of the proceeding would be likely to cause serious prejudice to the respondent.

We, therefore, reject the petitioner's prayer for amendment, and accordingly strike off issues Nos. 6 and 10.

(Sd.) AMAR NATH, *Chairman,*
Election Tribunal, Indore.

(Sd.) R. N. SHINGAL, *Member,*
Election Tribunal, Indore.

(Sd.) M. B. REGE, *Member,*

The 29th October, 1952.

[No. 19/92/52-Elec.III.]

By Order,

P. R. KRISHNAMURTHY, *Asstt. Secy.*

